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1 because they didn't always make the hearings available by 2 teleconference. If they were available by teleconference 3 I was generally available as a resource. If they were 4 not, I was on hand should someone have a question to call 5 about.	1 position is or isn't exempt and then pay the employee 2 accordingly?
6 Q All right, you work out of Anchorage, right?	3 MR. YOUNGMUN: Object, calls for a legal conclusion.
7 A Correct.	4 Q You can go ahead and answer.
8 Q You get lots of phone calls from Juneau?	5 A I think it would be at some risk to do so, which is why we 6 try to make it very clear when we have -- both me and my 7 staff, when we have these conversations that, you know, 8 this is only based on what we're talking about and right 9 now we're just talking 'cause I don't know what the facts 10 are. And I won't give you a formal opinion. My practice 11 is to say I won't give you a formal opinion until I see it 12 in writing. Because I've had instances where people have 13 turned around and I hear it coming back at me years later, 14 well, so and so told me that this was so. Well, I may 15 have told you that, but my recollection of the facts or my 16 notes indicate that they're not the facts that we have 17 before us today. So in some circumstances where I've 18 been, I feel, misquoted or quoted out of context in 19 discussions of these natures, it's been my practice to 20 say, you know, if you want it in writing, if you want to 21 formalize this opinion to have something -- particularly 22 since the amendment to the liquidated damages statute. If 23 you want to have something that you can take to court and 24 use as a defense, then it'll only be a formal opinion 25 letter and you only get that when you put in writing and
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1 I think I want a formal opinion letter on this. Or 2 they'll say, well, let me talk to my client and see if 3 they want a formal opinion letter on this.	1 give me your facts.
4 Q Okay, so not meaning to be obstreperous here, but then is 5 the answer to my question, yes, there is an opinion other 6 than a written opinion?	2 Q Okay. Does the Department of Labor from time to time do 3 workshops for employers -- employers?
7 A Well, I guess I didn't complete my answer. I would not -- 8 and try to convey to whoever I'm talking to that that 9 verbal discourse is not a formal Department opinion 10 because until I see the facts as they're going to 11 represent them to me in writing, anything I say is nothing 12 more than just theoretical.	4 A Yes.
13 Q Okay. Turning to this particular case here, first of all, 14 just so you understand, I think you do, but the materials 15 supervisor isn't the job in question here, it's a position 16 called safety specialist. Do you recollect in this time 17 frame of whatever it is, June of '96, having -- or, 18 rendering what might be called an oral opinion concerning 19 a safety specialist position to Mr. Mark Nelson?	5 Q All right, are some of the issues addressed there exempt/ 6 nonexempt status?
20 A No, I'm sorry, I deal with hundreds of calls a year and a 21 lot of them deal with this kind of issue because the -- 22 the opinion letters are almost solely my domain. So I -- 23 I certainly don't recall a conversation of that nature.	7 A Yes.
24 Q Okay. Would it be reasonable for an employer to rely upon 25 a what might be called oral opinion from you in saying a	8 Q Okay, and do you conduct those?
	9 A I do, and some members of my staff do.
	10 Q Okay, do you ever suggest to employers who are seeking 11 wage and hour opinions that they seek the advice of legal 12 counsel?
	13 A Yes.
	14 Q Is that something you do regularly?
	15 A Yeah, I think that's generally a part of our pattern, along 16 with saying if you want -- if you have a situation that 17 you want formal -- a formal opinion from the Department 18 on, this is how you go about getting it. And other 19 circumstance -- it depends upon how the question is posed, 20 but very frequently I will refer people to legal counsel, 21 advise them to find a good competent employment law 22 attorney.
	23 Q Okay. Your prior testimony indicated that you wanted to 24 have writings from the employer describing the job in 25 order to do a WHD. Do you require the employer to give

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1	you some type of verity to that? In other words, give you	1 from an assistant AG saying such and so would be the case.
2	a sworn statement saying this is what the job and the job	2 And I know we have received issue -- opinions on those on
3	duties?	3 occasion. One that comes to mind dealt with helicopter
4 A	No. Our opinion is -- that's why our opinions in writing	4 pilots and the professional exemptions.
5	are based on those documents. And if they -- they turn	5 Q Is it Daboff v. Tactical Helicopter (ph)?
6	out to be wrong, it's their problem to deal with because	6 A Actually it precedes Daboff by about 10 years.
7	we're asking them for facts.	7 Q And those opinions are internal to the Department, then,
8 Q	Okay. Do you have any written guidelines as to how each	8 or are they available somehow, if you know?
9	letter inquiry about wage and hour classification is	9 A A little bit of yes on both of those, but some have been
10	supposed to be researched issue -- researched and then	10 fashioned as attorney/client privilege and so would not be
11	issued?	11 generally available to the public.
12 A	No.	12 Q As far as being available to an individual or company to
13 Q	And who can ask for a wage and hour opinion letter?	13 rely upon as authority for their action in regarding
14 A	Anybody can, an attorney, an employer, an employee,	14 asserting a position to be exempt or nonexempt, which
15 Q	Union?	15 carries more weight, an attorney general opinion or a
16 A	Union.	16 WHOL?
17 Q	Schoolkid?	17 A If you had two existing.....
18 A	(Witness nods affirmatively)	18 MR. YOUNGMAN: Just pose an objection that it calls for
19 Q	And when you or -- and/or others who may do this, draft	19 speculation and a legal conclusion.
20	these WHOLs, do they confer regularly or ever with an	20 Q Okay, you can answer.
21	attorney general in the Department of Law?	21 A If you had two existing at the same time on the same
22 A	Occasionally, if it's an issue that we may not have --	22 subject, one from the AG's office to us and one from us to
23	have had any history with, or if it's an issue dealing	23 an employer, there would have to be a reason for the
24	with a new variation of the law, either through a court	24 difference in the opinions. If -- if we had received an
25	interpretation or perhaps a newly written statute.	25 AG opinion that said in our opinion this position is not

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1 Q	Does the attorney -- are you familiar with attorney	1 exempt, and the Department after receipt of that and
2	general opinions?	2 knowledge of that issued an opinion saying in our belief
3 A	Yes.	3 it is exempt and here's an opinion letter -- and, by the
4 Q	Does the attorney general ever issue opinions that concern	4 way, I don't know if that circumstance ever occurred --
5	Department of -- well, in a broad sense let me ask you	5 there would've been a policy call made at a desk higher
6	first, Department of Labor issues?	6 than mine.
7 A	Yes.	7 Q Okay, let me ask you this question. If you have an
8 Q	Okay, could you give me a couple examples?	8 attorney general opinion saying this particular position
9 A	Oh, about 1982 when the intertie was just getting started	9 is exempt and then an employer inquires of you concerning
10	between Anchorage and Fairbanks, our attorney general then	10 that position, is it your policy to follow the attorney
11	was -- our assistant attorney general assigned to the	11 general's decision?
12	Department was Robert Landau and he issued a lengthy	12 A Absent some guidance otherwise from my superiors, yes,
13	opinion on the coverage of Title 36, which is the public	13 that would be the case.
14	contracts law, to that particular project.	14 Q As far as the availability of these resource documents
15 Q	Okay, are there any that you're aware that deal with	15 we've been talking about, if they're available to the
16	exemption issues?	16 public are they listed on the web?
17 A	I'm not aware of any formal attorney general opinions that	17 A No.
18	are numbered and archived in the AG's office that deal	18 Q They're generally not?
19	with those issues, but we have received memoranda over the	19 A No, what I refer to when I use the term AG opinions is
20	years. My file of attorney general opinions goes --	20 actually a body of documents that's everything -- that
21	contains documents back to the '60s. And I know that	21 includes everything from what preceded the modern-day wage
22	we've received informal advice in the form of memoranda	22 and hour policy letter, policy letters from management
23	that we colloquially in the office refer to as AG	23 above my level in the 20 years before I came to the
24	opinions, but they're not issued over the AG's signature.	24 Department that were gathered together when we started
25	the Attorney General signatures. They're a memorandum	25 maintaining some reference documents to informal AG

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1 advisory memos as I've discussed to formal numbered AG  
 2 opinions over the Attorney General's signature to court  
 3 decisions. And the court decisions could be U. S. Supreme  
 4 Court, State Supreme Court, Federal District Court,  
 5 depending upon the type of issue that has come up. So  
 6 it's a rather -- I think there's three three-inch binders  
 7 of this stuff that's been maintained chronologically by  
 8 year, and it -- mostly it's internal reference and  
 9 historical reference to see where we were and are we still  
 10 there or if we're not there any longer why has it changed.

11 Q Have you ever testified in court regarding issues  
 12 concerning wage and hour?

13 A Yes.

14 Q All right, how many times? Roughly.

15 A Half a dozen.

16 Q And have you -- and doing that have you ever been  
 17 qualified as an expert witness?

18 A Yes.

19 Q And in regard to what issues?

20 A Interpretation of wage and hour law and regulations and  
 21 application of those to a given set of facts.

22 Q And can you name some of the case names and judges, if you  
 23 have some?

24 A I believe -- I testified in a case before Judge -- then  
 25 Judge Fabe that involved a travel agency on the North

1 Q Anchorage.

2 A All of those were Anchorage court cases.

3 Q Okay, in regard to any conversation you might have had  
 4 with Mark Nelson back in 1996 or thereabouts....

5 A '97?

6 Q '97, if he did speak -- I'm going to withdraw that  
 7 question.

8 MR. COVETT: Why don't we go off record for just a second,  
 9 I think I'm done, and then Mr. Youngman likely will have some  
 10 questions for you.

11 (OFF THE RECORD)

12 (ON THE RECORD)

13 Q In regard to your -- the June 25th letter from Mr. Nelson  
 14 to you -- let me withdraw that. You have the June 25th  
 15 letter, the June 19th letter and your letter of June 25.

16 A 26.

17 Q 26, thank -- well, dictated June 25....

18 A Dictated on the 25th.

19 Q ....I'm sorry. And, okay, and there's the June 26th.  
 20 Okay, well, that may answer my question right there. If --  
 21 What I'm trying to ascertain is if you can tell me by  
 22 looking at the documents if your letter of June 25/26 is  
 23 in response to both his June 19 and June 25 letter or not?

24 A It probably is, and the reason I say that is in reviewing  
 25 the documents, and particularly my response to the June 19

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1 Slope, and the name of the company was an acronym of  
 2 letters that doesn't make any sense to me, but it was like  
 3 PNWC, I think, or something like that. And they were the  
 4 defendant in an overtime case. I believe I testified in a  
 5 case involving Delta Western out in the Aleutian Chain,  
 6 Unalaska. I testified -- no, I did not testify. I was  
 7 excused by the judge in the Barrios case on the North  
 8 Slope, B-A-R-R-I-O-S, which eventually went to the Supreme  
 9 Court. I was qualified as an expert witness but the  
 10 questions that were being posed were objected to in the  
 11 terms of asking me to make a conclusion of law and the  
 12 judge determined that he could do that himself without my  
 13 help, thank you.

14 Q As judges will do.

15 A Oh, yes, they're aggravating when they do that. Those are  
 16 three that come to mind. I know that there have been  
 17 others.

18 Q Okay, do you know if the trial -- like the Delta Western  
 19 case, do you know if that was an Anchorage case as opposed  
 20 to a Bethel case?

21 A I believe Delta Western was Anchorage.

22 Q All right, and do you know if State or federal court?

23 A State.

24 Q And then the Barrios case was?

25 A State court. Anchorage.

1 letter. I can see what more than likely happened here was  
 2 that he was asking a question about a really craftily  
 3 unique area of the law in the supervisory exemption, and I  
 4 knew he wanted to find out about the exempt status but I  
 5 was not sure that he understood the implications with  
 6 regard to all hours worked. So I -- I believe that I  
 7 called him, initiated a phone call, discussed those  
 8 issues, asked some more questions, explained exactly what  
 9 the differences were and what the pitfalls were here, and  
 10 as a result of that call he then faxed over the June 25th  
 11 letter, which means I probably called him early in the  
 12 morning on the 25th, this was sent over on -- 9:30 on the  
 13 25th, and upon receipt of that later that day I dictated  
 14 the letter that we have as wage and hour opinion letter  
 15 122.

16 Q Okay, and looking at the fax imprint on top of the June  
 17 25th letter, you -- that indicates it's sent at 10:34 on  
 18 the -- June 25, '97?

19 A Correct.

20 Q And then which one of these two letters -- excuse me, the  
 21 June 19 letter was the one with the attachments, is that  
 22 right?

23 A Correct.

24 Q Okay. And then so it makes sense, then, at the conclusion  
 25 of your conversation on the morning of the 25th you would

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1	dictate your June 26 letter while it's fresh in your mind?	1 documents before us today, but I don't recall the
2 A	Yes.	2 conversation verbatim by any stretch of the imagination.
3	MR. COVELL: That's all I have.	3 Q Okay, so you don't have any specific recollection of
4	MR. YOUNGMAN: Could we take about a five-minute break?	4 telephone discussions with Mr. Nelson about this materials
5	MR. YOUNGMAN: Sure.	5 supervisor position which is the subject of the Exhibits
6	(OFF THE RECORD)	6 to your deposition?
7	(ON THE RECORD)	
8 BY MR. COVELL:		
9 Q	Good morning, Mr. Carr, my name is Greg Youngman, I	7 A Other than I know that we -- that I would've called him
10	represent APC Natchez in this case, and I just have some	8 because the uniqueness of the supervisory position and the
11	follow-up questions. You indicated in your testimony that	9 issues that his inquiry presented would've given me enough
12	you frequently -- you or other staff members in your	10 concern that I wanted to talk with him and make sure he
13	office would frequently give out oral opinions on whether	11 understood the other obligations outside of the overtime
14	or not a particular position was exempt or nonexempt, is	12 implications for his letter.
15	that right?	13 Q But you don't have any specific recollection of that
16 A	To make that absolutely accurate -- I may have said, but	14 discussion?
17	what I want to convey here is I have three regional	15 A No.
18	offices and depending upon where the call comes in,	16 Q And I think you indicated that you don't have a
19	whichever takes that call will talk to people and answer	17 recollection of any discussions with Mr. Nelson relating
20	their questions and give a little repartee back and forth	18 to a safety specialist position back in this spring or
21	about this is what the law requires and if you have this	19 summer of 1997, is that right?
22	then that might be the case, but to my knowledge all of my	20 A No, I don't recall any conversation like that.
23	field folks are going to say "but if you want a formal	21 Q It's possible that you did but you just don't recall?
24	opinion from the Department you need to put it in writing	22 A That's correct.
25	and send it to Randy Carr."	23 Q And if Mr. Nelson were to testify that he had a discussion
		24 with you about a variety of positions including the safety
		25 specialist position, would you have any reason to doubt
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1 Q	I understand that's the process if you want a formal	1 his testimony?
2	opinion, but if I understand your testimony you indicated	2 A No.
3	that you yourself would frequent provide an oral opinion	3 Q You indicated that these formal opinion letters were --
4	on the exempt status of a particular position, is that	4 or, was one good way of showing this good faith defense,
5	right?	5 as I recall. What other ways -- what other things or what
6 A	Um-hm.	6 other ways can an employer demonstrate this good faith
7 Q	Now, when you would provide an oral opinion to an employer	7 defense, in your opinion?
8	on the exempt status of a particular position, would you	8 A Of course this is only my opinion, it's not necessarily
9	keep any written record or notes of that discussion?	9 sure about those five people that wear the black robes and
10 A	No.	10 make the big decisions, but if I were brainstorming with
11 Q	Do you know whether any of your staff members would keep	11 someone I would say, well, if you had an opinion from the
12	notes of a discussion where they rendered an oral opinion	12 U. S. Department of Labor that might be useful, although
13	on the exempt status of a particular position?	13 their definitions are different than ours. So it depends
14 A	I don't think they would, 'cause I don't think my staff	14 upon to some extent what forum the allegations are coming
15	would really characterize it as an opinion. You know, I	15 in. Trying to remember the exact testimony with regard to
16	think there would always be that caveat, "that sounds like	16 the changes in the liquidated damages statute. It seemed
17	it might be, but".	17 to me that the primary concern was that they wanted to
18 Q	Okay, now, do you know Mark Nelson?	18 somehow overcome what was -- the perception that a lot of
19 A	I've met him again today and he represents that we've met	19 employers would simply say, "well, I didn't know" and try
20	before, but I -- I don't recall.	20 and assert that as an affirmative defense for good faith.
21 Q	Do you have any recollection of any telephone discussions	21 And that the best and probably the only substantive way of
22	with Mr. Nelson?	22 proving that you in fact have exercised good faith was to
23 A	No specific recollections. I can -- as I testified	23 show that you had consulted with the enforcement authority.
24	earlier, I believe I can reconstruct that we had some	24 Q And when you say consulted with the enforcement authority,
25	telephone conversations relative to this -- these	25 what do you mean by that?

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1	A	In some manner that the facts of the particular situation	1 who's not doing due diligence can grab an opinion letter
2		had been conveyed to, in this case, the Department of	2 from six years ago and say, well, this is the Department's
3		Labor, the State Department of Labor, and an opinion	3 opinion, I'm relying on this, without bringing it forward
4		rendered by the State Department of Labor that was then	4 and shepherding it, if you will, with the Department's
5		relied upon and found later by the court to be incorrect.	5 records to insure that it's still an accurate opinion
6	Q	Would this include any oral opinions that you may have	6 today. And that's -- that's a concern, but we've been
7		rendered or that somebody in your office may have	7 more or less compelled to make them available, they are
8		rendered?	8 public records. Have to make them available to the public
9	A	My recollection of the testimony was that the -- and	9 but we try at every corner to assure that whoever's
10		again, this was not my testimony but I was present at the	10 accessing them has that caveat that you need to make sure
11		hearings, or present at the telecommunication conferences	11 that what you're relying on is the current status of the
12		for the hearings, and I believe there was an attorney	12 law or the current opinion.
13		there -- I'll think of his name as I'm talking here.	13 Q Now, correct me if I'm wrong, but it's my understanding
14		There was an attorney who was testifying as to this issue	14 that these -- these opinion letters might ultimately turn
15		and my recollection was that he was pointing out to the	15 out not to be true, is that right?
16		committee that the Department of Labor issued formal	16 A It could be. An example that comes to mind is -- I'm not
17		written wage and hour opinions to anyone who -- who	17 positive but I wouldn't be at all surprised to find a few
18		required them if they would simply go through this	18 opinion letters in the early records dealing with return
19		process, and that that would be an excellent method of	19 transportation costs. The Department had a policy and a
20		establishing that they've gone through the steps to show	20 position with regard to what all was incorporated into
21		that they were trying to do what was right.	21 calculating return transportation costs, and in the early
22	Q	Are there other steps an employer can go through....	22 '80s, about 1983, 1984, those aforementioned five people
23	A	I suppose they can contact an attorney and they could get	23 that wear the black robes disagreed with the Department's
24		the attorney to write them an opinion. That's untested	24 opinion and issued a court decision, the finding, in fact,
25		yet as far as I know as to whether the court would find	25 what those costs -- or, what the transportation costs are.
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1		that to be good faith.	1 which was substantially different than what the
2	Q	Any other thing -- Any other ways or things that you can	2 Department's previous posture had been.
3		think of that would be prudent for an employer to do to	3 Q Okay, but in terms of whether these opinion letters are
4		determine whether or not a position is exempt or	4 legally binding, a court could determine that the opinion
5		nonexempt?	5 letter was legally incorrect, is that right?
6	A	Well, certainly I suppose it goes without saying that just	6 A Yes, absolutely.
7		to simply ask the Department of Labor in a conversational	7 Q And so these opinion letters are given as guidance to
8		manner, a telephone call, here's what I've got, what do	8 employers who would request an opinion from the Department
9		you think, but the problem that I see that presenting is	9 of Labor, correct?
10		apparently what's before us here today is that when	10 A And they are -- they are given with the understanding that
11		everything's oral there are -- there's no promises that	11 this is the Department of Labor's position on this issue.
12		that's going to be binding. The Department certainly	12 If this fact pattern came before us we would or would not
13		would not feel bound by incorrect or incomplete or	13 act on it based on these facts. This is how we would act.
14		inaccurate advice given by one of our staff to a set of	14 Q So if the Department of Labor, either you or somebody in
15		facts that may or may not be proven to be accurate later	15 your office, gave either a formal written opinion or gave
16		on down the road. If a case came forward, a claim were	16 an oral opinion which an employer relied upon to make its
17		filed with us, we would pursue it unless we had an opinion	17 decision whether a position was exempt or nonexempt, that
18		on those facts in writing that said this -- this is in	18 didn't necessarily mean that ultimately that position was
19		fact what the Department's opinion is. And then we would	19 exempt or nonexempt if it was determined otherwise by the
20		have to make sure that the -- of course, the status of the	20 court, right?
21		law hadn't changed. That's one of the serious flaws with	21 A That's correct.
22		the opinion letter system and one that we recognized when	22 Q So if I understand when -- if I understand your testimony,
23		we initiated it was that it only establishes that snapshot	23 then, one way to show good faith is to call your office
24		in time, and as soon as these documents start becoming	24 and ask you about a particular position as to whether it's
25		formalized and become available to the public, someone	25 exempt or nonexempt, right?

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1 A	That would be a -- that would be the very minimum, I would think. And again, so far that level of good faith argument hasn't been tested in the courts, to my knowledge.	1 you if you had recognized what appears to be a test for exemption of employees from the provisions of the Fair Labor Standards Act for materials supervisors. That appears to be a form of a checklist, is that right?
5 Q	But you think it'd be prudent -- If an employer had a question about whether or not a particular position was exempt or nonexempt, it would be reasonable and prudent for an employer to contact your office to ask....	5 A Yes.
9 A	Yes.	6 Q And I think you indicated that this was a checklist based on the short test under the Fair Labor Standards Act, correct?
10 Q	....don't you think?	9 A Correct. Well, long and short tests both. It contains both.
11 A	Yes.	11 Q Okay, so it does contain both the long test and the short test?
12 Q	Would it be reasonable and prudent for the employer to review federal and State regulations that define the exempt status to determine whether or not a particular position is exempt or nonexempt?	13 A Correct.
16 A	It would be instructive to do both, although in most cases dealing with the white collar exemptions the State regulations are going to provide a more stringent requirement than the federal requirement. So to the extent that they would expand their understanding of how the exemption works, looking at the federal guidelines would be useful. But not necessarily -- in State court, at least, or under State law not necessarily determinative.	14 Q Does the State have a checklist type form that is similar to this document?
25 Q	Okay, but you would agree, then, that it would be prudent	16 A No.
		17 Q And as I recall you testified that you have seen checklists that are similar in format to this?
		19 A Yes.
		20 Q Just not this particular form?
		21 A I think so.
		22 MR. COVELL: Just for the record, that was Exhibit 4, APC 150, 151 we were talking about.
		24 MR. YOUNGMUN: Correct.
		25 Q I want to make sure I understand your testimony about this
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1	for -- reasonable and prudent for an employer to consult with State regulations on whether or not a particular position was exempt or nonexempt in Alaska?	1 good faith issue. I think you indicated that after the change in State law in 1999, correct me if I'm wrong, that you would prefacte your discussions with persons seeking information about the exempt status with regard to the good faith defense that it would prudent to get a formal opinion letter?
4 A	Yes.	7 A Actually what I said was that it was -- it's my practice even prior to that time, but I was particularly sensitized to it after the change in the statute, because what happened, as soon as the law changed, we started getting a lot more requests for opinions. We started getting a lot of contacts for opinions, telephone calls and so forth. And in light of the law and in light of the recent testimony on the statute, it was in the forefront of my mind that it'd be very crucial to employers to go through the full step and get a formal opinion from the Department in writing and give us everything in writing that we can rule upon. But I was doing that as my general practice even prior to that.
5 Q	Would it also be prudent for an employer to consult with legal and other resources regarding wage and hour compliance?	20 Q Okay, so with regard to any discussions that you had with Mr. Nelson back in 1997, at that time Alaska had not adopted this good faith defense, is that right?
8 A	Absolutely.	23 A I'm pretty certain it wasn't in effect then, yes.
9 Q	Would it also be prudent for an employer to review the job description for a particular position in determining whether or not a position is exempt or nonexempt?	24 Q Mr. Carr, I assume that over the years you had many, many telephone calls from a variety of people regarding your
12 A	Yes.	
13 Q	Would it also be reasonable and prudent for an employer to talk to people out in the field that are actually either performing or observing the performance of duties with regard to determining whether or not a particular position is exempt or nonexempt?	
18 A	That would be necessary.	
19 Q	I was going to ask you about one of the Exhibits.	
20 MR. YOUNGMUN:	I'm looking for the.....	
21 MR. COVELL:	There's a whole clean set here.	
22 MR. YOUNGMUN:	Okay.	
23 MR. COVELL:	Came into play.	
24 MR. YOUNGMUN:	My mind was starting to play tricks on me.	
25 Q	Okay, I think this is part of Exhibit 4. Mr. Covell asked	

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1	views on a particular position as to whether it's exempt	1 and there's a gray area about whether a particular
2	or nonexempt, is that right?	2 position is exempt or nonexempt what types of information
3 A	Yes.	3 would you ask for?
4 Q	And I assume this includes discussions with attorneys?	4 A Usually what's proffered at the beginning is some
5 A	Yes.	5 variation of the job description, which I tell folks that
6 Q	On average can you give me an estimate of how many -- how	6 we like to see job descriptions because we enjoy reading
7	many telephone calls a week do you field on exempt-type	7 fiction, but what we need is, from someone on the ground,
8	questions?	8 a detailed explanation of what that job description really
9 A	I'd probably say it's not unusual to get three or four a	9 means, and broken down by duty, and then those duties
10	week.	10 broken down by time. Particularly important in the white
11 Q	Three or four a week. And has that generally been the	11 collar exemptions because of the time element tests.
12	case since you became the chief of labor standards?	12 Q And would it be common to have -- to obtain this type of
13 A	More so earlier on. As I'm slowing starting to wind down	13 information by telephone in discussions with the....
14	my career, I'm trying to push more of that off on my	14 A No.
15	subordinates to give them more exposure and training to	15 Q ....employer?
16	this. But as a general rule those -- those sorts of	16 A No. when we get into the breaking things down by time, I
17	activity were gladly pushed uphill to me by my staff.	17 -- I will not issue any sort of an opinion on -- well, to
18 Q	So in that 1996, 1997 time frame when you first became the	18 my recollection I don't think I've ever had a case where
19	chief, then, you would've -- your recollection is that you	19 people could tell me on telephone how much time they spend
20	would've on an average received more telephone calls from	20 doing this or how much time they spend doing that. They
21	employers or attorneys than more recently?	21 might hypothesize, let's assume that they're spending 60%
22 A	Yes.	22 of their time doing this. Well, if in fact they are then
23 Q	So you get calls from attorneys about exempt status	23 you would meet the standard if it were a retail or service
24	questions?	24 establishment, for example, where you wouldn't meet the
25 A	Yes.	25 standard if it wasn't a retail or service establishment
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1 Q	And telephone calls from human resource people?	1 and you were looking at, say, the administrative
2 A	Yes.	2 exemption. And we can talk about what if's and if then's,
3 Q	Do you get telephone calls from business managers or	3 but it's purely theoretical at that point.
4	business executives?	4 Q Okay, and then if you were asked to render a formal
5 A	Yes.	5 opinion letter, then you would -- you would follow that up
6 Q	And I assume that one of your functions as the chief of	6 with a request in writing?
7	labor standards is to give -- provide guidance and	7 A Yes.
8	education to employers about wage and hour laws, is that	8 Q With a breakdown of times and duties, correct?
9	correct?	9 A Yes.
10 A	Yes.	10 Q Would it be fair to say that sometimes job descriptions
11 Q	And also with regard to issues that may affect the exempt	11 don't mean anything in terms of determining whether or not
12	status of a particular position, is that also true?	12 a position is exempt or nonexempt?
13 A	That's one of the components of our overall body of wage	13 A I've found that the job description sometimes has very
14	and hour laws, yes.	14 little relationship to the actual duties being performed.
15 Q	And so do you -- would you agree that one of your roles as	15 Q And those would be the occasions where you would follow up
16	the chief of labor standards is to coach employers on wage	16 with the employer and ask for additional information about
17	and hour practices?	17 what was actually being done on the job?
18 A	I've not ever really thought of it that way. I guess it	18 A Yes.
19	could be characterized in that manner, yes.	19 Q Do you do -- I assume that you do training of staff with
20 Q	Okay. And in fact when you talk to employers who may have	20 the Department of Labor internally?
21	questions about whether a position is exempt or nonexempt	21 A Yes.
22	do you not try to extract information from employers when	22 Q And do you also provide training or educational
23	they're asking you questions about the exempt status?	23 opportunities for employers in an external setting?
24 A	Yes, I do.	24 A Yes.
25 Q	And if there's a gray area -- when you talk to an employer	25 Q Can you give me some examples of where you might provide